

13-11-17 Actions by enforcing authority.

- (1) The enforcing authority may bring an action:
 - (a) to obtain a declaratory judgment that an act or practice violates this chapter;
 - (b) to enjoin, in accordance with the principles of equity, a supplier who has violated, is violating, or is otherwise likely to violate this chapter; and
 - (c) to recover, for each violation, actual damages, or obtain relief under Subsection (2)(b), on behalf of consumers who complained to the enforcing authority within a reasonable time after it instituted proceedings under this chapter.
- (2)
 - (a) The enforcing authority may bring a class action on behalf of consumers for the actual damages caused by an act or practice specified as violating this chapter in a rule adopted by the enforcing authority under Subsection 13-11-8(2) before the consumer transactions on which the action is based, or declared to violate Section 13-11-4 or 13-11-5 by final judgment of courts of general jurisdiction and appellate courts of this state that was either reported officially or made available for public dissemination under Subsection 13-11-7(1)(c) by the enforcing authority 10 days before the consumer transactions on which the action is based, or, with respect to a supplier who agreed to it, was prohibited specifically by the terms of a consent judgment that became final before the consumer transactions on which the action is based.
 - (b)
 - (i) On motion of the enforcing authority and without bond in an action under this Subsection (2), the court may make appropriate orders, including appointment of a master or receiver or sequestration of assets, but only if it appears that the defendant is threatening or is about to remove, conceal, or dispose of the defendant's property to the damage of persons for whom relief is requested. An appropriate order may include an order:
 - (A) to reimburse consumers found to have been damaged;
 - (B) to carry out a transaction in accordance with consumers' reasonable expectations;
 - (C) to strike or limit the application of unconscionable clauses of contracts to avoid an unconscionable result; or
 - (D) to grant other appropriate relief.
 - (ii) The court may assess the expenses of a master or receiver against a supplier.
 - (c) If an act or practice that violates this chapter unjustly enriches a supplier and damages can be computed with reasonable certainty, damages recoverable on behalf of consumers who cannot be located with due diligence shall be transferred to the state treasurer pursuant to Title 67, Chapter 4a, Unclaimed Property Act.
 - (d) If a supplier shows by a preponderance of the evidence that a violation of this chapter resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error, recovery under this Subsection (2) is limited to the amount, if any, by which the supplier was unjustly enriched by the violation.
 - (e) An action may not be brought by the enforcing authority under this Subsection (2) more than two years after the occurrence of a violation of this chapter.
- (3)
 - (a) The enforcing authority may terminate an investigation or an action other than a class action upon acceptance of the supplier's written assurance of voluntary compliance with this chapter. Acceptance of an assurance may be conditioned on a commitment to reimburse consumers or take other appropriate corrective action.

- (b) An assurance is not evidence of a prior violation of this chapter. Unless an assurance has been rescinded by agreement of the parties or voided by a court for good cause, subsequent failure to comply with the terms of an assurance is prima facie evidence of a violation.
- (4)
 - (a) In addition to other penalties and remedies set out under this chapter, and in addition to its other enforcement powers under Title 13, Chapter 2, Division of Consumer Protection, the division director may issue a cease and desist order and impose an administrative fine of up to \$2,500 for each violation of this chapter.
 - (b) All money received through administrative fines imposed under this section shall be deposited in the Consumer Protection Education and Training Fund created by Section 13-2-8.
- (5)
 - (a) Within 30 days after agency or judicial review of a final division order imposing an administrative fine, the supplier on whom the fine is imposed shall pay the fine in full.
 - (b) The unpaid amount of a fine is increased by 10%:
 - (i) if the fine has not been paid in full within 60 days after the final division order imposing the fine; and
 - (ii) unless the division waives the 10% increase in a stipulated payment plan.

Amended by Chapter 124, 2013 General Session